

**Jersey Law 6/1988**

**COLLECTIVE INVESTMENT FUNDS (JERSEY) LAW, 1988.**

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*Collective Investment Funds (Jersey) Law,  
1988*

**COLLECTIVE INVESTMENT FUNDS (JERSEY) LAW, 1988.**

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**A LAW** to prohibit unauthorised persons from being functionaries of collective investment funds; to regulate such functionaries and funds; and for connected purposes, sanctioned by Order of Her Majesty in Council of the

**17th day of FEBRUARY, 1988.**

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*(Registered on the 8th day of April, 1988.)*

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**STATES OF JERSEY.**

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The 8th day of December, 1987.

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

**ARTICLE 1**

**Interpretation**

- (1) In this Law, unless the context otherwise requires –
- “books and papers” and “books or papers” includes –
- (a) accounts, deeds, writings and documents, including microfilm; and
  - (b) matters recorded otherwise than in legible form, but capable of being reproduced in legible form;
- “collective investment fund” has the meaning given in Article 2;

“Committee” means the Finance and Economics Committee;

“company” means a body corporate wherever incorporated;

“court” means the Inferior Number of the Royal Court;

“functionary” means a functionary to whom this Law applies;

“permit” means a permit granted under this Law;

“prescribed” means prescribed by an Order made by the Committee;

“prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription, sale or exchange any units; and also means any document or advertisement issued by or on behalf of a functionary presenting to the public a description of, or other information about, a collective investment fund;

“register” includes a register of issued bearer share certificates or issued bearer unit certificates;

“Schedule” means the Schedule to this Law;

“unit” means any material representation of the rights of participants with regard to the assets of a collective investment fund whether such rights are represented –

- (a) by securities issued by the collective investment fund; or
- (b) by the entry of names of participants in a register kept in relation to the collective investment fund; or
- (c) by any other means.

(2) A reference in this Law to a numbered Article without further identification is a reference to the Article so numbered in this Law.

(3) A reference in any Article or other division of this Law to a paragraph, sub-paragraph, or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article or other division of this Law in which such reference occurs.

(4) Unless the context otherwise requires, a reference in this Law to an enactment, is a reference to that enactment as amended, extended or applied by or under any other enactment, and to any enactment which repeals and re-enacts the first mentioned enactment with or without further amendment.

## ARTICLE 2

### **Collective investment funds**

(1) For the purposes of this Law any scheme or arrangement for the investment of money is a collective investment fund if –

- (a) it has as its object or one of its objects the collective investment of capital acquired by means of an offer to the public of units for subscription, sale or exchange; and
- (b) the circumstances referred to in any sub-paragraph of paragraph (2) apply to the fund.

(2) The circumstances to which reference is made in sub-paragraph (b) of paragraph (1) are as follows –

- (a) units are or are to be bought back or redeemed, directly or indirectly, out of the assets of the fund; or

- (b) units are or have been or will be issued continuously or in blocks at short intervals; or
  - (c) the fund operates on the principle of risk spreading.
- (3) For the purposes of this Law –
- (a) an offer for subscription, sale or exchange of units constitutes an offer to the public where the offer is not addressed exclusively to a restricted circle of persons; and
  - (b) an offer shall not be considered to be addressed to a restricted circle of persons unless –
    - (i) the offer is addressed to an identifiable category of persons to whom it is directly communicated by the offeror or his appointed agent; and
    - (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer; and
    - (iii) the number of persons in the Bailiwick or elsewhere to whom the offer is so communicated does not exceed fifty.
- (4) For the purposes of this Law –
- (a) a company which anywhere carries on long term insurance business of any class specified in the First Schedule to the Insurance Business (Jersey) Law, 1983<sup>1</sup> (except Class V or Class VII) is deemed to be a company issuing units of a collective investment fund; and

<sup>1</sup> Volume 1982–83, page 88.

- (b) the contracts of any description in that Schedule (other than those referred to in Class V and Class VII) are deemed to be units of a collective investment fund, if money received from the public through the effecting of such contracts is not received exclusively from a restricted circle of persons and such contracts shall in the aggregate be deemed to be a collective investment fund.
  
- (5) For the purposes of paragraph (4) –
  - (a) money shall not be considered to be received exclusively from a restricted circle of persons unless –
    - (i) the opportunity to invest money through such contracts is afforded exclusively to an identifiable category of persons to whom the existence of the opportunity is directly communicated by the insurer or his appointed agent; and
    - (ii) the members of that category are the only persons who may invest money in such contracts and they are in possession of sufficient information to be able to make a reasonable evaluation of the investment; and
    - (iii) the number of persons in the Bailiwick or elsewhere to whom the existence of such opportunity is so communicated does not exceed fifty; and
  - (b) the reference in paragraph (1) to capital acquired by means of an offer to the public of units for subscription, sale or exchange shall be read as a reference to capital acquired by means of the advertising or promotion of the opportunity to invest money through such contracts.
  
- (6) Without prejudice to the generality of the foregoing provisions of this Article, a company which by virtue of paragraph (4) is deemed to be a company issuing units shall itself be deemed to be a collective investment fund.

## ARTICLE 3

**Functionaries**

(1) The Schedule shall apply for determining who is, or is to be treated as, a functionary.

(2) The Committee may by Order amend the provisions of the Schedule.

(3) An Order made under this Article shall not come into operation before the expiration of six months beginning on the date on which the Order is made.

## ARTICLE 4

**Requirement for functionary to hold permit**

(1) Subject to the provisions of this Law, no person shall in or from within the Bailiwick be, or hold himself out as being, a functionary of a collective investment fund except under a permit unless his function in relation to that collective investment fund is to be performed wholly outside the Bailiwick and paragraph (2) does not apply to him.

(2) Subject to the provisions of this Law, no company incorporated under the “Loi (1861) sur les Sociétés à Responsabilité Limitée”<sup>2</sup> shall in or from within a country or territory outside the Bailiwick be, or hold itself out as being, a functionary of a collective investment fund except under a permit.

(3) Any person who contravenes this Article shall be guilty of an offence but the rights of the persons concerned in any transaction shall not be affected by such contravention.

<sup>2</sup> Tomes I-III, page 232 and Volume 1968-69, pages 111, 118, 119 and 120.



(4) Paragraph (1) shall not apply to such persons or class of persons as may be prescribed.

## ARTICLE 5

### **Application for permit**

- (1) An application for a permit shall –
- (a) be in the form required from time to time by the Committee;
  - (b) describe the function of the applicant;
  - (c) specify the collective investment fund and the class thereof (if any) to which his function relates;
  - (d) contain or be accompanied by such other particulars as the Committee may require;
  - (e) be verified in such manner and to such extent as the Committee may require; and
  - (f) be accompanied by such fee as may be prescribed.

(2) Without prejudice to the generality of sub-paragraph (d) of paragraph (1) the Committee may require an applicant to furnish any information about the collective investment fund to which his function relates which the Committee needs for the purposes of paragraph (3).

(3) The Committee, when considering an application for a permit, shall have regard to the protection of the public and to the best economic interests of the Bailiwick and to this end –

- (a) shall consider the function to be performed by the applicant, the reputation of the applicant and the collective investment fund to which his function relates; and

- (b) shall also take into account any other functionaries there are or may be of the collective investment fund to which the application relates.

## ARTICLE 6

### **Grant or refusal of permit, imposition of conditions and cancellation of permit**

(1) The Committee may grant a permit either unconditionally or subject to such conditions as it considers appropriate, or may refuse to grant a permit.

(2) Every permit shall specify the collective investment fund and the class of fund (if any) to which the holder's function relates.

(3) The Committee may from time to time vary any condition attached to the grant of a permit or attach a new condition.

(4) The Committee may prescribe conditions applicable to

–

(a) all permits; or

(b) certain classes of permits; or

(c) all permits granted to certain functionaries or groups of functionaries; or

(d) all permits granted in relation to collective investment funds of a certain kind.

(5) In exercising its powers under paragraphs (3) and (4) of this Article, the Committee shall have regard to the matters referred to in paragraph (3) of Article 5.

(6) The Committee may cancel a permit –

- (a) if the holder of the permit has not commenced his function in or from within the Bailiwick within one year of the date of the grant of the permit; or
- (b) if the holder of the permit ceases to perform his function in or from within the Bailiwick; or
- (c) at the request of the holder of the permit; or
- (d) if it appears to the Committee that any requirements of the Committee in respect of the collective investment fund or the class thereof to which the holder's function relates are no longer satisfied; or
- (e) if it appears to the Committee that the holder of the permit has contravened any provision of this Law, or any Regulation or Order made, or a condition of any permit granted, under this Law or, in purported compliance with any such provision, has furnished the Committee with false, inaccurate or misleading information; or
- (f) if in the opinion of the Committee the cancellation of the permit is advisable for the protection of the public or of the participants or potential participants in the collective investment fund.

(7) If the Committee acting under paragraph (3) varies a condition attached to a permit or attaches a condition to a permit or acting under paragraph (6) cancels a permit, it shall give notice thereof in writing to the holder of the permit.

(8) The Committee may prescribe fees to be paid by the holder of a permit and the intervals at which such fees are to be paid.

## ARTICLE 7

**Procedure and right of appeal on refusal or cancellation, etc., of  
permit**

(1) Subject to any order of court made under Article 20, if a condition attached to a permit is varied, or a new condition is attached to a permit, or a permit is revoked, such variation or such new condition, or such revocation, as the case may be, shall not take effect before the expiration of –

- (a) a period of ninety days from the date on which notice in writing of the decision of the Committee to make such variation or attach such new condition or revoke such permit is given to the holder of the permit; or
- (b) the date on which an appeal (if any) is determined or abandoned;

whichever is later (but if may take effect earlier at the request of the holder of the permit).

(2) Where the Committee refuses the grant of a permit, or attaches any condition to the grant of a permit, or varies any such condition, or revokes a permit, the applicant or the holder of the permit, as the case may be, may by notice in writing require the Committee to furnish to him within thirty days a statement in writing of its reasons for that decision.

(3) Nothing in paragraph (1) or (2) derogates from or otherwise affects a condition prescribed under paragraph (4) of Article 6.

(4) Any person aggrieved by such decision of the Committee may appeal to the court, within ninety days after the notification of the decision of the Committee was given, on the grounds that the decision of the Committee was unreasonable having regard to all the circumstances of the case.

## ARTICLE 8

**Power to obtain information and require production of documents**

(1) The Committee may require a holder of a permit to furnish the Committee, at specified times or intervals, with information about specified matters being, if the Committee so requires, information verified in a specified manner.

(2) The Committee may –

- (a) require a holder of a permit to produce, at such time and place as the Committee may specify, such books and papers as it may specify; or
- (b) authorise any person, on producing (if required to do so) evidence of his authority, to require a holder of a permit to produce to him forthwith any books or papers which that person may specify.

(3) where by virtue of paragraph (2) the Committee or a person authorised by it has power to require the production of any books or papers from any holder of a permit, the Committee or that person shall have the like power to require production of those books or papers from any person who appears to the Committee or that person to be in possession of them, but where any person from whom such production is required claims a lien on books or papers produced by him or claims that such books or papers are subject to legal professional privilege, the power to require production shall be without prejudice to the lien or the privilege, as the case may be.

(4) Any power conferred by or by virtue of paragraphs (2) or (3) to require a holder of a permit or other person to produce books or papers shall include power –

(a) if the books or papers are produced –

- (i) to take copies of them or extracts from them; and

(ii) to require a company holding a permit, or any other person, who is a present or past director, controller or auditor of, or is or was at any time employed by, the company in question, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) Nothing in this Article shall empower the Committee or a person authorised by it to require information, books or papers unless it is relevant to any investigation relating to the holder of a permit.

(6) Subject to the provisions of paragraph (7), any person who fails to comply with, or with a requirement imposed under, this Article shall be guilty of an offence.

(7) Where a person is charged with an offence in respect of his failure to comply with a requirement imposed under paragraph (2) or (3) to produce any books or papers it shall be a defence to prove that they were not in his possession or control and that it was not reasonably practicable for him to comply with the requirement.

(8) References in paragraphs (2) to (4) to a holder of a permit include references to any person who appears to the Committee to be acting in contravention of the provisions of paragraphs (1) or (2) of Article 4 (Requirement for functionary to hold permit).

## ARTICLE 9

### **Misleading statements and practices**

- (1) Any person who –
- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive.

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or refrain from entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by units.

(2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any units is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those units or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those units.

(3) In proceedings brought against any person for an offence under paragraph (2) it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in paragraph (2).

- (4) Paragraph (1) does not apply unless –
  - (a) the statement, promise or forecast was made in or from, or the facts are concealed in or from, the Bailiwick; or
  - (b) the person on whom the inducement is intended to or may have effect is in the Bailiwick; or
  - (c) the agreement is or would be entered into, or the rights are or would be exercised, in the Bailiwick.
- (5) Paragraph (2) does not apply unless –

- (a) the act is done or the course of conduct is engaged in the Bailiwick; or
- (b) the false or misleading impression is created there.
- (6) In paragraph (1) “an investment agreement” means –
  - (a) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting units; or
  - (b) any agreement under which a person is to receive advice as to the acquisition, sale, subscription for or underwriting of units or as to the exercise of the rights conferred by units.
- (7) A person guilty of any offence under this Article shall be liable to a fine or to imprisonment for a term not exceeding seven years, or both.

## ARTICLE 10

### **Classification of collective investment funds**

- (1) The Committee may by Order –
  - (a) classify collective investment funds; or
  - (b) specify requirements which must be satisfied by a collective investment fund for inclusion in a particular class or for remaining in such a class; or
  - (c) impose requirements in respect of a class; or
  - (d) make provision for the grant by the Committee of a certificate to the effect that a collective investment fund satisfies the requirements for inclusion in the class named in the certificate and is so included at the date of issue of the certificate.



(2) Without prejudice to paragraph (1), the Committee may by Order provide for the constitution, management, control and winding up of a collective investment fund, or any class of such fund, and prescribe the powers and duties of the functionaries of any such fund and the rights and obligations of the participants in any such fund.

(3) Without prejudice to the generality of paragraph (2), Orders made thereunder may make provision –

- (a) as to the issue and redemption of units;
- (b) as to the expenses of the collective investment fund and the means of meeting them;
- (c) for the appointment, removal, powers and duties of an auditor for the collective investment fund;
- (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the collective investment fund;
- (e) requiring the keeping of records with respect to the transactions and financial position of the collective investment fund and for the inspection of those records;
- (f) requiring the preparation of periodical reports with respect to the collective investment fund and the furnishing of those reports to the participants in the collective investment fund and to the Committee; and
- (g) with respect to the amendment of the collective investment fund.

(4) Orders under paragraph (2) may make provision as to the contents of the documents constituting the collective investment fund (and as to contents which if included shall be of no effect) including provision requiring any of the matters mentioned in paragraph (3) to be dealt with in the documents; but Orders under paragraph (2) shall be

binding on the functionaries of and the participants in the collective investment fund independently of the contents of the documents and, in the case of the participants, shall have the effect as if contained in them.

(5) For the purposes of paragraph (4) “documents constituting the collective investment fund” includes any agreements entered into between the functionaries of the collective investment fund with each other and with the collective investment fund.

## ARTICLE 11

### **Compensation schemes**

The States may by Regulations establish in relation to any class of collective investment fund schemes for compensating investors in cases where functionaries or former functionaries are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connexion with collective investment funds in that class.

## ARTICLE 12

### **Directions**

(1) Without prejudice to Article 10, the Committee may give a direction under paragraph (2) in respect of a collective investment fund, or any class of such fund.

(2) A direction under this Article may –

- (a) require a functionary of the collective investment fund to cease the issue or redemption, or both the issue and redemption, of units on a date specified in the direction until such further date as is specified in that or another direction;

- (b) require a functionary of the collective investment fund to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.

## ARTICLE 13

### **Prospectuses**

(1) The Committee may, by Order, prohibit, restrict or control the promotion by or on behalf of any person, of collective investment funds, or any class of such funds.

(2) Without prejudice to the generality of paragraph (1), or otherwise, Orders made under this Article may –

- (a) require functionaries of collective investment funds –
  - (i) to publish or make available to the public on request prospectuses containing such information about the funds and complying with such requirements as are prescribed;
  - (ii) to provide for such a prospectus to contain such further information as is necessary to give investors an informed assessment of any investment proposed in the prospectus;
  - (iii) to publish or make available a revised or further prospectus if –
    - (1) there is a significant change affecting any matter contained in a prospectus previously published or made available; or
    - (2) a significant new matter arises the inclusion of information in respect of which would have been required if it had arisen when the previous prospectus was prepared;

- (b) prohibit the issue of prospectuses unless they have been filed with, or filed and approved by, the Committee;
  - (c) provide for the payment, by the person who is treated by the Order as being responsible for the prospectus, of compensation to any person who has become or agreed to become a participant in the fund and suffered loss as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required under the Order to be included;
  - (d) provide for exemptions of any persons or class of persons from compliance with such an Order, or a particular provision thereof;
  - (e) provide generally for carrying such Orders into effect.
- (3) Orders made under this Article shall not affect any liability which any person may incur apart from such an Order.

#### ARTICLE 14

##### **Offences and penalties**

- (1) Any person who –
  - (a) for the purpose of procuring, whether for himself or another person, a permit; or
  - (b) in purported compliance with a requirement imposed by or under this Law;

furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular, shall be guilty of an offence.

- (2) Any person who, with intent to avoid direction of the commission of an offence under this Law –

- (a) removes or causes to be removed out of the jurisdiction; or
- (b) destroys; or
- (c) conceals; or
- (d) fraudulently alters,

any books or papers shall be guilty of an offence.

(3) Any person guilty of an offence under this Law for which no special penalty is provided shall be liable to a fine or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

(4) Where a person continues to fail to comply with a requirement imposed under Article 8 (Power to obtain information etc.) after being convicted of that failure, he shall be guilty of a further offence and liable to a fine for each day on which the failure so continues or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

## ARTICLE 15

### **Legal proceedings**

(1) Where an offence under this Law committed by a company is provided to have been committed with the consent or connivance of, or be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the company, or any person who was purporting to act in any such capacity, he as well as the company shall be guilty of that offence and shall be liable to be prosecuted and punished accordingly.

(2) For the purposes of this Article, a person shall be deemed to be a director of a company if he occupies in relation thereto the position of a director, by whatever name called, or is a person in

accordance with whose directions or instructions the directors of the company or any of them act:

Provided that a person shall not, by reason only that the directors of a company act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(3) No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.

(4) Notwithstanding any enactment or rule of law to the contrary, proceedings which may be taken against any person for an offence against this Law may be taken within the period of a year and a day from the date on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the knowledge of the Committee, or where the person in question was outside the Bailiwick at that date, within the period of a year and a day from the date on which he first lands in the Bailiwick thereafter, whichever of the said periods last expires.

(5) For the purposes of paragraph (4), a certificate under the hand of the President of the Committee as to the date on which such evidence as aforesaid came to the knowledge of the Committee shall be conclusive evidence thereof.

## ARTICLE 16

### **Accessories and abettors**

Any person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable under this Law shall be liable to be dealt with, tried and punished as a principal offender.

## ARTICLE 17

**Orders**

(1) The Committee may by Order make provision for the purpose of carrying this Law into effect and in particular, but without prejudice to the generality of the foregoing and subject to paragraph (3) of Article 3 (Functionaries to whom this Law applies), for prescribing any matter which is to be prescribed under this Law.

(2) An Order made under this Law may –

- (a) make different provisions in relation to different cases or circumstances;
- (b) contain such incidental provisions as the Committee may consider to be necessary or expedient.

(3) The Subordinate Legislation (Jersey) Law, 1960,<sup>3</sup> shall apply to Orders made under this Law.

## ARTICLE 18

**Service of notices**

(1) This Article shall have effect in relation to any notice or other document required or authorised by or under this Law to be given to or served on any person.

(2) Any such document may be given to or served on the person in question –

- (a) by delivering it to him; or
- (b) by leaving it at his proper address; or

<sup>3</sup> Tome VIII, page 849.

- (c) by sending it by post to him at that address.
- (3) Any such document may –
  - (a) in the case of a company, be given to or served on the secretary, clerk or other similar officer of the company or any person who purports to act in any such capacity, by whatever name called;
  - (b) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

(4) For the purposes of this Article and Article 12 of the Interpretation (Jersey) Law, 1954<sup>4</sup> (meaning of service by post) in its application to this Article the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that –

- (a) in the case of a company or its secretary, clerk or other officer or person referred to in sub-paragraph (a) of paragraph (3), it shall be the address of the registered or principal office of the company;
- (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership;

and for the purposes of this paragraph the principal office of a company registered outside the Bailiwick or of a partnership carrying on business outside the Island shall be their principal office within the Bailiwick.

(5) If the person to be given or served with any document mentioned in paragraph (1) has specified an address within the Bailiwick other than his proper address within the meaning of paragraph (4) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for

<sup>4</sup> Tome VIII, page 381.



the purpose of this Article and Article 12 of the Interpretation (Jersey) Law, 1954<sup>5</sup> as his proper address.

## ARTICLE 19

### **Investigation by Committee**

(1) Where, in the opinion of the Committee such action is advisable for the protection of the public, or of participants or potential participants in a collective investment fund, the Committee may appoint an inspector to investigate the affairs of all or any of the holders of permits relating to the collective investment fund and to make such further enquiries as the inspector may consider necessary.

(2) An inspector appointed under this Article may examine under oath the holder of a permit, being an individual, and his servants or agents, and the directors, officers, servants or agents of the holder of a permit, being a company, for the purpose of obtaining any information that he considers necessary for the purpose of his investigation.

(3) References in paragraphs (1) and (2) to a holder of a permit include references to any person who appears to the Committee to be acting in contravention of the provisions of Article 4 (Requirement for functionary to hold permit).

(4) When an inspector is appointed under this Article, it is the duty of all persons who are liable to be examined under oath under paragraph (2) to give the inspector all assistance in connexion with the investigation which they are reasonably able to give.

(5) If any person –

(a) refuses to produce any book or document which it is his duty under Article 8 to produce; or

<sup>5</sup> Tome VIII, page 381.

- (b) refuses to attend before an inspector when required to do so; or
- (c) refuses to answer any question put to him by an inspector with respect to the affairs of the functionary;

the inspector may certify the refusal to the court.

(6) The court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of court.

(7) This Article is in addition to and does not derogate from Article 8 (Power to obtain information and require production of documents).

## ARTICLE 20

### **Applications to court**

(1) If on the application of the Committee the court is satisfied that it is desirable in the interest of the participants or potential participants in a collective investment fund that paragraph (1) of Article 7 shall not have effect or shall cease to have effect in any particular case, the court may so order.

(2) An order under paragraph (1) may be made without notice to and without hearing any functionary.

- (3) If it appears to the Committee –
  - (a) that it is desirable in the interest of the participants or potential participants in a collective investment fund; or
  - (b) that a functionary has failed to comply with any provision of this Law, or of any Regulation or Order made or permit

granted, or with any direction given, under this Law, or in purported compliance with any such provision has furnished to the Committee false, inaccurate or misleading information;

the Committee may apply to the court for an order removing the functionary and replacing him with a person nominated by the Committee and may also apply for an order that the person nominated by the Committee procures the winding up of the collective investment fund.

(4) On an application under paragraph (3) the court may make such order as it thinks fit, which may include provisions to facilitate the removal or replacement of a functionary and the winding up of the collective investment fund.

(5) The Committee shall give written notice of the making of an application under paragraph (3) to the functionaries of the collective investment fund and take such steps as it considers appropriate for bringing the making of the application to the attention of participants in the collective investment fund.

(6) If on the application of the Committee the court is satisfied –

- (a) that there is a reasonable likelihood that a person will fail to comply with a provision of this Law, or of any Regulation or Order made or permit granted, or with any direction given, under this Law; or
- (b) that a person has failed to comply with any such provision or direction and that there is a reasonable likelihood that the failure will continue or be repeated; or
- (c) that any person has failed to comply with any such provision or direction and that there are steps that could be taken for remedying the failure;

the court may make an order preventing the failure or requiring that person and any other person who appears to the court to have been knowingly concerned in the failure to take such steps as the court may direct to remedy it.

(7) If on the application of the Committee the court is satisfied –

- (a) that profits have accrued to a person as a result of his failure to comply with any provision of this Law, or of any Regulation or Order made, or permit granted, or with any direction given, under this Law; or
- (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that failure;

the court may make an order requiring the person concerned to pay into court for distribution as the court may direct such sum as appears to the court to be just having regard to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(8) On an application under paragraph (7) the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in sub-paragraph (a) of that paragraph and for determining how any amounts are to be paid or distributed under that paragraph; and the court may require any such accounts or other information to be verified in such manner as it may direct.

## ARTICLE 21

### **Actions for damages**

A failure to comply with such provisions of this Law, or any Regulation or Order made under it, as the States may by Regulations specify shall be actionable at the suit of a person who suffers loss as a result of the failure, subject to the defences and other incidents applying

to actions for breach of statutory duty; but no such failure shall invalidate any transaction.

## ARTICLE 22

### **Disclaimer of liability**

Neither the States, nor the Committee, nor any person who is a member of the Committee, or who is or is acting as an officer, servant or agent of the Committee, or who is an inspector appointed by the Committee under Article 19, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any Regulations or Order made, or purportedly made, under this Law, unless the act or omission is shown to have been in bad faith.

## ARTICLE 23

### **Power to amend Article 2**

The States may make Regulations amending the provisions of Article 2 (Collective investment funds).

## ARTICLE 24

### **Transitional provisions**

(1) Notwithstanding Article 4, a person whose application for a permit is received by the Committee before the commencement of Article 4 in relation to him may, until the Committee disposes of his application, but subject to paragraphs (2) and (3), be, or hold himself out as being, a functionary of a collective investment fund.

(2) Notwithstanding Article 6, the Committee may, in relation to persons to whom paragraph (1) applies, prescribe conditions which will apply to –

- (a) all such persons;

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*Collective Investment Funds (Jersey) Law,  
1988*

- (b) certain classes of such persons;
- (c) a particular person;

until the Committee has disposed of the application.

(3) Article 8 (Power to obtain information and require production of documents) and Article 19 (Investigation by Committee) shall apply to a person to whom paragraph (1) applies, as though he were the holder of a permit, until the Committee disposes of his application.

#### ARTICLE 25

##### **Citation and commencement**

(1) This Law may be cited as the Collective Investment Funds (Jersey) Law, 1988.

(2) This Law shall come into operation on such day as the States may by Act appoint and different days may be appointed for different purposes of the Law.

**R.S. GRAY**

*Deputy Greffier of the States.*

*SCHEDULE***(Article 3)****Functionaries***PART I*

Functionaries are those persons referred to in Part II of this Schedule.

*PART II*

<i>Group</i>	<i>Description</i>
1	Any company issuing units.
2	Manager, administrator, registrar, investment manager, investment adviser.
3	Distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent, repurchase agent.
4	Trustee, custodian, depository.
5	Member of a partnership, (except a limited partner).

*PART III*

1. In this Schedule “group” means a group of the kind specified in Part II.

2. A reference in this Schedule to a numbered group is a reference to the group so numbered in Part II.

3. A group or part of a group may be described in an Order or permit by reference to a group specified in Part II.